

Nicholas J. Accurso, Esq. (NA 1853)
An Associate with the Firm of
REARDON & SCLAFANI, P.C.
Attorneys for Defendants
Avis and PV Holding
220 White Plains Road, Suite 235
Tarrytown, New York 10591
(914) 366-0201

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DAWN BARKER,

Plaintiffs,

NOTICE OF MOTION

- against -

08 CIV. 4517 (JSR) (JCF)

BRENDA A. ITHIER, PV HOLDING CORP.
and AVIS BUDGET GROUP, INC.,

Defendants.

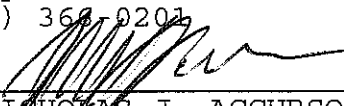
-----X
S I R S :

PLEASE TAKE NOTICE, that the defendants PV Holding Corp. and Avis Budget Group, Inc. will move this Court before Hon. Jed S. Rakoff, U.S.D.J., United States District Court, at the United States Courthouse, Room 14A, 500 Pearl Street, New York, New York, for an order pursuant to Fed. R. Civ. P. 56(b), 49 U.S.C. 30106 and New York's Vehicle and Traffic Law §§128 and 388(1) dismissing the complaint against the defendants Avis Budget Group, Inc. and PV Holding Corp. and for such other and further relief as the Court deems just and proper. All opposition papers are to be served and filed by September 2, 2008. Reply papers are to be served and filed by September 9, 2008. Oral argument will be held at 4:00 p.m. on September 16, 2008.

Dated: Tarrytown, New York
July 31, 2008

Yours, etc.,

REARDON & SCLAFANI, P.C.
Attorneys for Defendants
Avis & PV Holding
OFFICE & P.O. ADDRESS
220 White Plains Road, Suite 235
Tarrytown, New York 10591
(914) 366-0201

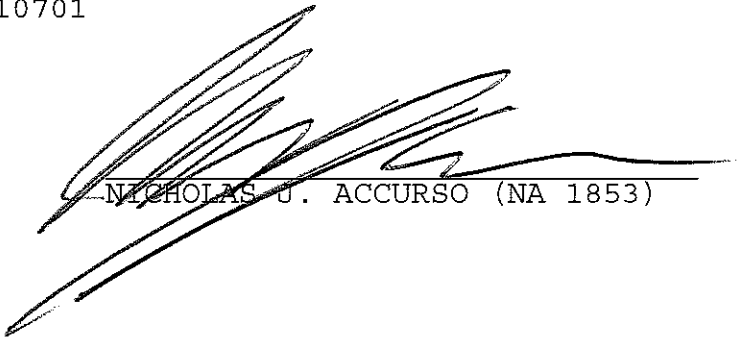
By: 
NICHOLAS J. ACCURSO (NA 1853)

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on August 1, 2008, he caused to be served a true and correct copy of the within NOTICE OF MOTION AND SUPPORTING DOCUMENTS by ECF to:

TO: Greenstein & Milbauer, LLP
Attorneys for Plaintiff
1825 Park Avenue, 9th Floor
New York, New York 10035

Buratti, Kaplan, McCarthy
& McCarthy, Esqs.
Attorneys for Defendant Ithier
One Executive Boulevard, Suite 280
Yonkers, New York 10701



NICHOLAS J. ACCURSO (NA 1853)

Nicholas J. Accurso, Esq. (NA 1853)
An Associate with the Firm of
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(914) 366-0201

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
DAWN BARKER,

Plaintiffs,

- against -

STATEMENT PURSUANT
TO LOCAL RULE 56.1

08 CIV. 4517 (JSR) (JCF)

BRENDA A. ITHIER, PV HOLDING CORP.
and AVIS BUDGET GROUP, INC.,

Defendants.

-----x

S I R S :

PLEASE TAKE NOTICE, that the defendants Avis Budget Group, Inc. and PV Holding Corp. set forth their statement pursuant to Local Rule 56.1 in support of their instant Notice of Motion pursuant to Fed. R. Civ. P. 56(b) for an order dismissing plaintiff's complaint and granting defendants summary judgment, as follows:

1. That this is an action in diversity to recover personal injuries resulting from an alleged motor vehicle accident which occurred on March 12, 2007. Docket #1.

2. That the defendants PV Holding Corp. and Avis Budget Group, Inc. are affiliated with Budget Rent a Car System, Inc. All are engaged in the business of renting consumer automobiles to the general public under the "Budget Rent a Car" trade name. See Reiseman affidavit.

3. On March 11, 2007, defendant Brenda A. Ithier rented a

2007 Chevrolet Malibu, Massachusetts plate number 35VB42, from Budget Rent a Car System, Inc. See Reiseman affidavit; Close affidavit; rental agreement; certificate of title.

4. That the vehicle referred to in the plaintiff's complaint, a 2007 Chevrolet Malibu alleged to be bearing New York State license plate number 35VB42 and alleged to be operated by the defendant Ithier and is owned by the defendant PV Holding Corp., in actuality, bears Massachusetts license plate number 35VB42. See Docket #1; Reiseman affidavit; rental agreement; certificate of title.

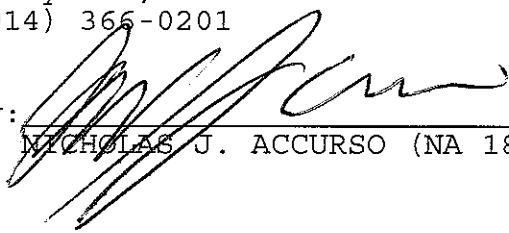
5. That the defendant Avis Budget Group, Inc. was not the owner of said 2007 Chevrolet Malibu. See certified title report.

6. That plaintiff commenced this action by the filing of a summons and complaint on or about May 2, 2008 in Supreme Court of the State of New York, County of New York. See Docket #1.

Dated: Tarrytown, New York
July 31, 2008

Yours, etc.,

REARDON & SCLAFANI, P.C.
Attorneys for Defendants
PV Holding and Avis
OFFICE & P.O. ADDRESS
220 White Plains Road, Suite 235
Tarrytown, New York 10591
(914) 366-0201

By: 
NICHOLAS J. ACCURSO (NA 1853)

Nicholas J. Accurso, Esq. (NA 1853)
An Associate with the Firm of
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Attorneys for Defendants
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220 White Plains Road, Suite 235
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(914) 366-0201

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
DAWN BARKER,

Plaintiffs,

- against -

DECLARATION IN SUPPORT
OF DEFENDANTS' MOTION

08 CIV. 4517 (JSR) (JCF)

BRENDA A. ITHIER, PV HOLDING CORP.
and AVIS BUDGET GROUP, INC.,

Defendants.

-----x

Nicholas J. Accurso, an attorney duly admitted to practice before this Court and the Courts of the State of New York, declares the truth of the following under penalty of perjury:

1. That I am an associate of the law firm of Reardon & Sclafani, P.C., attorneys for the defendants Avis Budget Group, Inc. and PV Holding Corp.; and am fully familiar with the facts and circumstances of this action. I submit this declaration in support of the instant motion of the defendants Avis Budget Group, Inc. and PV Holding Corp. for an order pursuant to Fed. R. Civ. P. 56(b) and 49 USC 30106 dismissing the plaintiff's complaint against Avis Budget Group, Inc. and PV Holding Corp. and for an order pursuant to Rule 56(b) and New York State Vehicle and Traffic Law §388 dismissing the plaintiff's complaint against Avis Budget Group, Inc.

2. The plaintiff brings this action to recover damages for

personal injuries allegedly sustained in a motor vehicle accident which occurred on March 12, 2007 at approximately 12:15 p.m. on Jerome Avenue 300 feet west of its intersection with East 167th Street in The Bronx. (See ¶¶ 22-25 to the complaint at Docket #1.)

3. This action was commenced by the filing of a summons and complaint in the New York County Clerk's Office on May 2, 2008. Docket #1. On May 15, 2008, this action was removed to this Court pursuant to 28 USC §§1331, 1332, 1441(a) and 1446(b) based on the complete diversity of citizenship of the parties and the Court's federal question jurisdiction. Id. On May 21, 2008, the defendants Avis Budget Group, Inc. and PV Holding Corp. served their answer. Docket #7. The defendant Brenda Ithier served her answer on or about June 11, 2008.

4. At ¶¶ "9" and "27" of the plaintiff's complaint, it is alleged that on March 12, 2007, each of the moving defendants owned a 2007 Chevrolet automobile bearing New York State license plate number 35VB42. This is incorrect as the 2007 Chevrolet automobile involved in this accident actually bore Massachusetts plate number 35VB42. See affidavit of Joy Reiseman sworn to on the 30th day of July, 2008, the rental agreement at Exhibit A, the certified title report at Exhibit B and the "certification of no record found" from the New York State Department of Motor Vehicles for plate number 35VB42 at Exhibit C.

5. The certified certificate of title from the State of

Massachusetts conclusively shows that the 2007 Chevrolet bearing plate number 35VB42 referred to in plaintiff's complaint is owned by the defendant PV Holding Corp. (See also Reiseman affidavit.)

6. That the defendants PV Holding Corp. and Avis Budget Group, Inc. are affiliated with Budget Rent a Car System, Inc. and are engaged in the business of renting automobiles to the general public under the "Budget Rent a Car" trade name. On March 11, 2007, the subject 2007 Chevrolet Malibu was rented to the defendant Ithier. See Reiseman affidavit and rental agreement at Exhibit A.

7. As more fully set forth in the accompanying memorandum of law, pursuant to 49 USC §30106 and New York State Vehicle and Traffic Law §§128 and 388, the defendants Avis Budget Group, Inc. and PV Holding Corp. are entitled to summary judgment dismissing the plaintiff's complaint.

WHEREFORE, it is respectfully requested that the defendants' motion be granted in all respects and that plaintiff's action be denied in its entirety.


NICHOLAS J. ACCURSO

Sworn to and subscribed before
me this 31st day of July, 2008:


Notary Public

DAWN M. SEHLMAYER
NOTARY PUBLIC State of New York
No. 4954896 *Wash State*
Qualified in Dutchess County
Commission Expires Aug. 21, 19 *2009*

R - MANHATTAN GOLD (MANHATTAN LOCATIONS ONLY)

1143

978821

266 M L 2 .00

OPTIONAL SERVICES

15.50

6. At 0	22.64
---------	-------

LOW 23.99/DAY DECLINED

0 WK 6

FSP: 4.00/DAY DECLINED

MIN 10Y/11 /C . 22.99

911: 12.95/DAY DECLINED

12AC & RULE 6E 22.39

FUEL SERVICE: .77281A

0.045/GAL

'24 PASS CAR KENI 18A + .05

11.115 FEE	4.55
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SUBTOTAL	26.00
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18X	5.0002	1.56
-----	--------	------

WY2 1001000 SUPPLEMENT 2 00

TOTAL CHANGES 29.56

ACCOUNT ONE	CV	USD	24.30
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1. NO PASSENGER FOR REMI (A)

3 12 BOLDY BA STATE SUMMARGE

NONCESSIONE MITOMERE FREE

CONCESSION RECOVERY FEE

FASTBREAK

-----NOTICES-----NOTICES-----NOTICES-----NOTICES-----NOTICES-----NOTICES-----NOTICES-----NOTICES-----NOTICES-----

---00-74 HILZD, \$ 9.50 REFUELING SERVICE CHGE WILL
APPLY.

---I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS SHOWN ON THIS RENTAL DOCUMENT AND ON THE SEPARATE RENTAL DOCUMENT JACKET DELIVERED TO ME WITH THIS RENTAL DOCUMENT.

A SIGNATURE IS ON FILE..... RENTAL #765136266

KES 4 41174467-US-20

CLOVER AV: 7552H

00FC/2905/4/075/29:10/F

PREPARED BY: 52291

CLOSED BY: 75528

Received Time May. 13. 2008 1:04PM No. 4962

CERTIFICATE OF TITLE

1496762 7F100704

THE COMMONWEALTH OF MASSACHUSETTS

TITLE NUMBER BD364789		VEHICLE IDENTIFICATION NUMBER 1G1ZT58N37F100704		DATE OF ISSUE 07/07/2006	
MFRS. MODEL YEAR 2007	MAKE CHEV	MODEL NAME MALIBU	MODEL NO.	BODY STYLE/TYPE SEDAN	NEW/USED NEW
CYL. PASS. ORS. 06 05 4	PURCHASE DATE 06/15/2006	ODOMETER READING 6	PREV. TITLE NO.		PREV. TITLE STATE
ACTUAL MILEAGE 6			IF PREVIOUS STATE WAS TITLE EXEMPT, REGISTRATION NUMBER IS DISPLAYED		

MAILING ADDRESS ONLY:

BANK OF NEW YORK AS TRUSTEE
300 CENTRE POINTE DR
VIRGINIA BEACH, VA 23462

OWNER(S) NAME AND ADDRESS:

PV HOLDING CORP
375 MCCLELLAN HWY
E BOSTON, MA 02128-1177

TITLE TYPE AND BRANDS

TITLE TYPE

BRAND
BRAND
BRAND
BRAND

TITLE MESSAGE(S)

FIRST LIENHOLDER:

BANK OF NEW YORK AS TRUSTEE
300 CENTRE POINTE DR
VIRGINIA BEACH, VA 23462

SECOND LIENHOLDER:

NOTICE: ASEP Emblem Corporation, while it remains the owner of this vehicle, has been assigned all the rights, but none of the obligations, of the transferor related to the transfer of this vehicle. This is NOT an assignment of title and at no time will ASEP Emblem Corporation own or be the assignee of title to this vehicle. Transferees should detach and retain this notification prior to registering this title.

RELEASE OF FIRST LIEN:	
THE FIRST LIENHOLDER'S INTEREST IN THE VEHICLE DESCRIBED IN THIS CERTIFICATE IS HEREBY RELEASED	
NAME:	
AUTHORIZED SIGNATURE:	
X	
DATE RELEASED:	

RELEASE OF SECOND LIEN:	
THE SECOND LIENHOLDER'S INTEREST IN THE VEHICLE DESCRIBED IN THIS CERTIFICATE IS HEREBY RELEASED	
NAME:	
AUTHORIZED SIGNATURE:	
X	
DATE RELEASED:	

THE REGISTRAR OF MOTOR VEHICLES HEREBY CERTIFIES THAT AN APPLICATION FOR A CERTIFICATE OF TITLE FOR THE MOTOR VEHICLE DESCRIBED HEREIN HAS BEEN DULY FILED, PURSUANT TO THE PROVISIONS OF THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, BASED ON THE STATEMENTS OF THE APPLICANT AND THE RECORDS ON FILE WITH THIS AGENCY, THE APPLICANT NAMED IS THE OWNER OF SAID VEHICLE.

THE REGISTRAR OF MOTOR VEHICLES FURTHER CERTIFIES THAT THE VEHICLE IS SUBJECT TO ANY SECURITY INTERESTS SHOWN HEREIN.

Anne L. Collins

Anne L. Collins
Registrar

CONTROL NO. F 2018425
NOT THE TITLE NUMBER

ALTERATION OR ERASURE VOIDS THIS TITLE.

KEEP IN SAFE PLACE

REGISTRY OF MOTOR VEHICLES

EXHIBIT "B"

Received Time Jun. 17. 2008 3:26PM No. 5235



Massachusetts Registry of Motor Vehicles

RMV Application Form 04517-JSR 4500 Document 8-3
www.mass.gov/rmv

3. Number of Documents: 1 ☐ RO (Registration Only) ☐ RX (Registration Transfer)
☐ RT (Registration & Title) ☐ TAR (Title Add Registration)
☐ TO (Title Only) ☐ SW (Summer/Winter Swap) ☐ SS (Surviving Spouse)

1. REG. EFF. DATE **06/21/2006** 2. REG. EXP. DATE 06/21/2007

Registration/Vehicle Information

5. Plate Type **PAN** 6. Registration Number **35UR518** 7. Previous Title # _____ 8. State _____

9. Type of Registration: ☒ Passenger ☐ Bus ☐ Taxi ☐ Livery ☐ Commercial
☐ Trailer ☐ Auto Home ☐ Semi-Trailer ☐ Motorcycle ☐ Other _____

10. Vehicle Identification Number: **1G1ZT58N37F100704**

11. Year **2007** 12. Make **CHEV** 13. Model Name **MALIBU** 14. Model # **1ZT69** 15. Body Style **SEDAN** 16. Circle Color(s) of Vehicle **3-Orange 1-Black 2-Blue** 17. # of Cylinders/Passengers/Doors/Wheels **6 / 5 / 4 / 4**

18. Transmission ☒ Automatic ☐ Manual 19. Total Gross Weight (Laden) _____ 20. Motor Power ☒ Gasoline ☐ Diesel ☐ Propane ☐ Electric ☐ Conversion ☐ Hybrid ☐ Other _____
21. Bus: ☐ Regular ☐ DTE ☐ Livery ☐ Taxi ☐ School Pupil
If carrying passengers for hire, max no of passengers that can be seated: _____
If school bus, is it used exclusively for city, town, or school district? ☐ Yes ☒ No

Owner Information

22. Owner #1 MA License. Use SSN if out-of-state _____ 23. Owner #2 MA License. Use SSN if out-of-state _____ 24. EIN/FID # (see block 29) **510252246**

25. Owner #1 Name (Last, First, Middle) _____ 26. Owner #1 Date of Birth _____

27. Owner #2 Name (Last, First, Middle) _____ 28. Owner #2 Date of Birth _____

29. Corp/Co/Organization Name (see block 24) **P.V. HOLDING CORP.** 30. City/Town Where Vehicle is Principally Garaged: **BOSTON (001)**

31. Mailing Address _____ City _____ State _____ Zip Code _____

32. Residential Address _____ City _____ State _____ Zip Code _____

33A. Lessee's MA License Number or EIN/FID Number. If out-of-state Lessee, use SSN and date of birth. _____ 33B. Lessee's Name: _____

34. Lessee's Address, City, State, and Zip Code _____

Title Data 35. Date of Purchase **06/15/2006** 36. Odometer Reading **006**

37. ☒ New Vehicle ☐ Used Vehicle 38. Title Type: ☒ Clear ☐ Salvage ☐ Reconstructed ☐ Owner Retained ☐ Theft ☐ Prior Owner Retained

39. Primary Salvage Title Brands: ☐ Repairable ☐ Parts Only 40. Secondary Salvage Brand(s) _____

Lienholder Information

41. Date of 1st Lien **06/15/2006** 42. Date of 2nd Lien _____

I/we certify that all liens on this vehicle are listed below

43. First Lienholder Code **C/31397** 44. Name **THE BANK OF NEW YORK, AS TRUSTEE**

45. Lienholder's Address **300 CENTRE POINTE DRIVE, VIRGINIA BEACH, VA 23462**

46. Second Lienholder Code _____ 47. Name _____

48. Lienholder's Address _____

Insurance Certification

The company signatory hereto hereby certifies that it has or will insure or guarantee performance by the applicant hereinbefore named with respect to the motor vehicle hereinbefore described for a period at least coterminous with that of such registration under a motor vehicle liability policy, binder or bond which conforms to the provisions of general laws, Chapter 175, Section 113A, and that the premium charge and classification on the effective date of registration are as established by the Commissioner of the Department of Transportation, Chapter 175, Section 113A.

49A. Policy Effective Date: **06/21/2006** 49B. Manual Class: **B&P** 49C. Ins. Company & Code: **887**

THE TRAVELERS INDEMNITY CO.
of Massachusetts
Licensed Agent
Per: [Signature]
Insurance Co's Authorized Representative's Signature (Original Only)

Signatures

I/we the applicants hereby certify under the penalties of perjury that there are no outstanding excise tax liabilities on the vehicle described above that have been incurred by the applicant(s), any member of the applicant's immediate family who is a member of the applicant's household or the business partner of the applicant(s). I/we hereby further certify that all information contained in this application is true and correct to the best of my knowledge and belief. I/we understand that false statements are punishable by fine, imprisonment or both.

50. Signature of Owner From Block 25 or 29. If owner is listed in Block 29, signer must also print name. [Signature] **Michael F. Hines**

51. Signature of 2nd Owner From Block 27. _____

52. Authorized Dealer Signature [Signature] 53. Dealer Reg. No. **Alisha Pisano**

54. Seller's Name (Please Print) **PRESTIGE PONT-OLDS/AVIS**

55. Seller's Address **P. O. BOX 651, PARSIPPANY, NJ 07054**

Sales or Use Tax Schedule

56 A. SALE BY LICENSED MOTOR VEHICLE DEALER

MA DOR-Registered Dealer EIN/FID # _____

Total Sale Price \$ _____
(adjusted for dealer's discount and manufacturer's rebate)

Less Manufacturer's Excise \$ _____

Net Sales Price \$ _____

Less Trade-in Allowance For \$ _____

Yr. _____ Make _____ Model _____

Trade-in VIN _____

Taxable Sales Price \$ _____

5% Sales Tax \$ _____

B. SALES BY OTHER THAN MOTOR VEHICLE DEALER

Gross Sales Price (Proof Required) \$ _____

5% Sales/Use Tax \$ _____

C. CLAIM EXEMPTION FROM TAX CODE: **999078896**

Form Attached (if required) _____

Exempt Organization Certificate # [Signature] **V**

Fee Information

57. Reg. \$ **31.5** Payment: ☐ Cash ☒ Check ☐ EFT/CC

Title \$ **50** Clerk ID: [Signature]

Tax \$ _____

P&I \$ _____

Total \$ **81.5**

58. Batch No: **0148**

59. Clerk/End User Initials: [Signature] **149676-2**

CERTIFICATE OF ORIGIN FOR A VEHICLE

0934



RBLPD019

DATE
06/15/06

INVOICE NO.
1AD89709389

VEHICLE IDENTIFICATION NO.
1G1ZT58N37F100704

YEAR
2007

MAKE
CHEVROLET

BODY TYPE
MALIBU SEDAN 2LT

SHIPPING WEIGHT
3253

H.P. (S.A.E.)
36.5

G.V.W.
4280

NO. CYLS.
06

SERIES OR MODEL
1ZT69

P.O. NUMBER 7017641N0200000

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation and is transferred on the above date and under the Invoice Number indicated to the following distributor or dealer.

NAME OF DISTRIBUTOR, DEALER, ETC.

44287 KDFT8N

PRESTIGE CHEVROLET, INC./AVIS
6 SYLVAN WAY
PARSIPPANY

NJ 07054-3826

It is further certified that this was the first transfer of such new vehicle in ordinary trade and commerce.

* THIS VEHICLE *
* HAS A *
* CALIFORNIA *
* EMISSION *
* SYSTEM *

CHEVROLET MOTOR DIVISION
GENERAL MOTORS CORPORATION

BY:

Richard C. [Signature]

(SIGNATURE OF AUTHORIZED REPRESENTATIVE)

(AGENT)

G46115550

DETROIT

MI 48243-1114

CITY - STATE

GM 521 REV. 10-05

44287
04
A
045
04

DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 1	NAME OF P.V. HOLDING CORP.	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 2	NAME OF PRESTIGE CHEVROLET, INC./AVIS A1709	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 3	NAME OF THE BANK OF NEW YORK, AS TRUSTEE	000005	
	ADDRESS 300 CENTRE POINTE DR., VIRGINIA BEACH VA 23462		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 4	NAME OF S. Alexandres	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 5	NAME OF D SOLANKI	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 6	NAME OF S. Alexandres	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 7	NAME OF D SOLANKI	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 8	NAME OF S. Alexandres	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 9	NAME OF D SOLANKI	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 10	NAME OF S. Alexandres	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 11	NAME OF D SOLANKI	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 12	NAME OF S. Alexandres	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 13	NAME OF D SOLANKI	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 14	NAME OF S. Alexandres	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 15	NAME OF D SOLANKI	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 16	NAME OF S. Alexandres	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 17	NAME OF D SOLANKI	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 18	NAME OF S. Alexandres	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 19	NAME OF D SOLANKI	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		
DISTRICT FOR DISCLOSURE ASSIGNMENT NUMBER 20	NAME OF S. Alexandres	000005	
	ADDRESS 375 MCCLELLAN HWY., EAST BOSTON MA 02128		

SCREEN PRINT TRANSACTION_ID: CA8681TJEJJI010817510905314

06/23/2008 09:05 MASSACHUSETTS REGISTRY OF MOTOR VEHICLES

UGR1210

TITLE AMEND

FUNCTION: T1A MSG: INQUIRY COMPLETE - DUP 0 LIEN 0 - ENTER ACTION

TITLE # : BD364789 VIN: 1G1ZT58N37F100704 BATCH#: 05812901010127

PLT TYP : PAN REG#: 35VB42 CLR: R

LIC #1 : LIC #2: FID#: 510252246 NEW TTL#:

ACT CD :

OWNER1 NAME L: F: M: DOB:

OWNER2 NAME L: F: M: DOB:

CORP/CO NAME : PV HOLDING CORP

MAIL ADDR : 375 MCCLELLAN HWY CITY: E BOSTON ST: MA ZIP 02128-1177

BLDG/APT : TITLE PRINT:

YEAR: 2007 MAKE: CHEV MODEL: MALIBU MODEL#: STYLE : SEDAN

CLR : BROWN / CYL : 06 PASS: 5 DOORS : 4 TRAN: A MTR PWR: G

PREV TITLE : PREV STATE:

STATUS/DATE: CANC - 05/08/2008 ENTRY DATE: 06/21/2006 PRINT DATE : 07/07/2006

PURCH DATE : 06/15/2006 ODOM : 6 NEW/USED: N TITLE RTN ST: KY

TITLE TYPE : CLEAR BRAND: REASON CODE :

LIENHOLDER 1 TYPE/CODE : C / 31397 LIENHOLDER 2 TYPE/CODE : /

BANK OF NEW YORK AS TRUSTEE

300 CENTRE POINTE DR

VIRGINIA BEACH VA 23462



New York State Department of Motor Vehicles
 Certified Document Center/Data Services
 6 Empire State Plaza
 Albany New York 12228

CERTIFICATION OF NO RECORD FOUND

Date June 5, 2008

Search Information:

Name (Last, First, Middle Initial) *****	Date of Birth *****	Client Identification Number 35VB412**	Plate Number *****
Street Address *****	Vehicle Identification Number (from vehicle registration) *****		
City *****	State NY	Zip Code *****	

Document Requested:

- ☐ Operating Record (includes all convictions and accidents)
- ☒ Vehicle Registration
- ☐ Vehicle Ownership

In compliance with your request, and using the search information shown above, I have caused a search to be made of the records of the Department of Motor Vehicles. I certify that, to date, no record has been found of the document requested.

Comments:

EXHIBIT "C"

Certified by,

Commissioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
DAWN BARKER,

Plaintiffs,

AFFIDAVIT

- against -

08 CIV. 4517 (JSR) (JCF)

BRENDA A. ITHIER, PV HOLDING CORP.
and AVIS BUDGET GROUP, INC.,

Defendants.

-----x

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MORRIS)

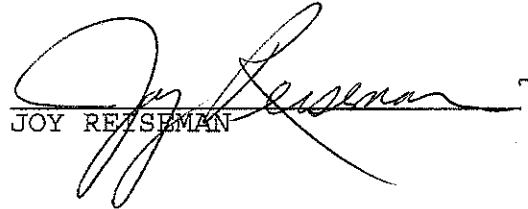
Joy Reiseman, being sworn, deposes and says:

1. I am the Assistant Secretary of PV Holding Corp., with offices at 3 Century Drive, Parsippany, New Jersey 07054. As the Assistant Secretary, I am fully familiar with the business of PV Holding Corp. and its affiliated and related entities, their holdings and business activities.


2. PV Holding Corp. and Avis Budget Group, Inc., through its subsidiary Budget Rent a Car System, Inc., are affiliated entities engaged in the business of renting consumer automobiles to the general public under the "Budget Rent a Car" trade name. PV Holding Corp. serves as the nominee titleholder for vehicles rented in 2007 by Budget Rent a Car System, Inc. A review of the rental agreement set forth at Exhibit A reveals that Budget Rent a Car System, Inc. rented a 2007 Chevrolet Malibu bearing Massachusetts license plate 35VB42 to a Brenda Ithier on March 11, 2007. The rental agreement identifies the vehicle rented to Ithier as car

#1496762 which our records reflect bears vehicle identification number 1G1ZT58N37F100704. As set forth on the certified certificate of title from the State of Massachusetts for this vehicle, set forth at Exhibit B, PV Holding Corp. is the registered owner of said vehicle.

3. For the reasons set forth by our counsel, Reardon & Sclafani, P.C., in support of this instant motion, it is respectfully requested that the defendants PV Holding Corp. and Avis Budget Group, Inc. be granted summary judgment dismissing plaintiff's complaint.


JOY REISEMAN

Sworn to and subscribed before
me this 30th day of July, 2008:


NOTARY PUBLIC
DAWN ANDREANO
Notary Public Of New Jersey
My Commission Expires Aug. 22, 2010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DAWN BARKER,

Plaintiffs,

AFFIDAVIT

- against -

08 CIV. 4517 (JSR) (JCF)

BRENDA A. ITHIER, PV HOLDING CORP.
and AVIS BUDGET GROUP, INC.,

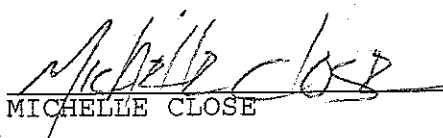
Defendants.
-----X

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MORRIS)

Michelle Close, being sworn, deposes and says:

1. I am the Records Custodian for Budget Rent a Car System, Inc., a subsidiary of the defendant Avis Budget Group, Inc., maintaining an office at 6 Sylvan Way, Parsippany, New Jersey.

2. Annexed as Exhibit A is a true, accurate and correct copy of a rental agreement entered into by Brenda Ithier on March 11, 2007 maintained in the ordinary course of business of Budget Rent a Car System, Inc.


MICHELLE CLOSE

Sworn to and subscribed before
me this 3rd day of July, 2008:


NOTARY PUBLIC

JACQUELINE CHESLOW
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 12, 20 12

Nicholas J. Accurso, Esq. (NA 1853)
An Associate with the Firm of
REARDON & SCLAFANI, P.C.
Attorneys for Defendants
220 White Plains Road, Suite 235
Tarrytown, New York 10591
(914) 366-0201

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x
DAWN BARKER,

Plaintiffs,

- against -

08 CIV. 4517 (JSR) (JCF)

BRENDA A. ITHIER, PV HOLDING CORP.
and AVIS BUDGET GROUP, INC.,

Defendants.

-----x

PRELIMINARY STATEMENT

The defendants PV Holding Corp. and Avis Budget Group, Inc. move this Court pursuant to Rule 56(b) for an order dismissing the plaintiff's complaint based on 49 USC §30106 and New York State Vehicle and Traffic Law §388. As a matter of law, it is submitted, plaintiff's complaint must be dismissed.

JURISDICTION

This Court has original jurisdiction pursuant to sub-chapter I of Chapter 301 of Title 49, United States Code §30106, the "complete preemption doctrine" and diversity of citizenship. 28 USC §§1331, 1332.

ARGUMENT

POINT I

THE PLAINTIFF'S COMPLAINT IS WITHOUT MERIT

New York State Vehicle and Traffic Law §388 imposes vicarious

liability on the owners of automobiles while those automobiles are being operated with the permission and consent of the owner. On August 10, 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act, 49 USC §30106 (commonly known as the "Graves Amendment") prohibiting the imposition of vicarious liability against owners of motor vehicles and their affiliates who rent or lease their vehicles to the public which are subsequently involved in motor vehicle accidents. Flagler v. Budget Rent a Car System, Inc., 538 F.Supp.2d 557 (EDNY, 2008); Merchants Insurance Group v. Mitsubishi Motor Credit Association, 2008 WL 203195 (EDNY, 2008); Berkan v. Penske Truck Leasing Canada, Inc., 535 F.Supp.2d 341 (WDNY, 2008). The preemptive effect of the "Graves Amendment" on statutes imposing liability on the owners of rental cars has been routinely recognized. Jasman v. DTG Operations, Inc., 533 F.Supp.2d 753 (W.D. Michigan, 2008); Garcia v. Vanguard Car Rental USA, Inc., 510 F.Supp.2d 821 (M.D. Fla., 2007); Dargahi v. Hymas, 2007 WL 2274861, fn. 1 (S.D.N.Y., 2007); Seymour v. Penske Truck Leasing Co., LP, 2007 WL 2212609 (S.D. Georgia, 2007); Jones v. Bill, 10 NY3d 550, __NE2d__(2008); Hall v. ELRAC, 52 AD3d 262, 859 NYS2d 641 (1st Dept., 2008); Graham v. Dunkley, 50 AD3d 55, 852 NYS2d 169 (2d Dept., 2008); Johnson v. Kling, 48 AD3d 637, 854 NYS2d 648 (2d Dept., 2008).

As the vehicle alleged in the plaintiff's complaint is owned by the defendant PV Holding Corp. (see certificate of title at

Exhibit B) and was rented through its affiliate engaged in the business of renting vehicles to the public, Budget Rent a Car Systems, Inc., and operated by its renter when the accident occurred, the instant action against PV Holding Corp. and its affiliate Avis Budget Group, Inc. is barred pursuant to 49 USC §30106 and plaintiff's complaint must be dismissed. See Reiseman affidavit.

As an additional ground for dismissal of plaintiff's complaint in favor of the defendant Avis Budget Group, Inc., it is submitted that the submission of the certified title report from the State of Massachusetts at Exhibit B showing that title to the vehicle is in PV Holding Corp. is prima facie proof that the defendant Avis Budget Group, Inc. is not the owner of said vehicle requiring dismissal of the plaintiff's complaint against Avis Budget Group, Inc., even in the absence of federal preemption. See New York Vehicle and Traffic Law §128; Squires v. Mumphrey, 36 AD3d 607, 828 NYS2d 449 (2d Dept., 2007); Marchetti v. Avis Rent a Car, 249 AD2d 518, 672 NYS2d 368 (2d Dept., 1998); Dickerson v. Diaz, 256 AD2d 435, 681 NYS2d 605 (2d Dept., 1998).

CONCLUSION

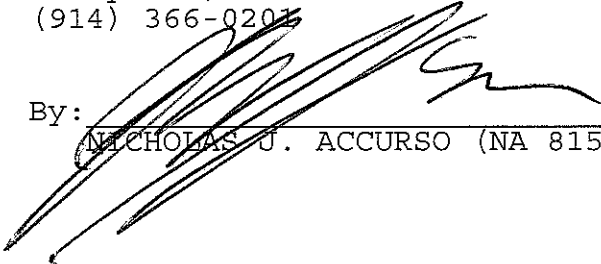
As a matter of law, the defendants PV Holding Corp. and Avis Budget Group, Inc. are entitled to summary judgment dismissing the complaint.

4

Dated: Tarrytown, New York
July 31, 2008

Respectfully submitted,

REARDON & SCLAFANI, P.C.
Attorneys for Defendants
PV Holding and Avis
OFFICE & P.O. ADDRESS
220 White Plains Road, Suite 235
Tarrytown, New York 10591
(914) 366-0201

By: 
NICHOLAS J. ACCURSO (NA 8153)